her structure was in violation of the City's property maintenance code, *Id.*;

4. Helen Stacey's argument that the City denied her the right to sell her property was without merit because there was no evidence of documentation showing that compliance with Section 107.5 of the BOCA Code was underway, *Id.*;

5. Helen Stacey failed to establish that the City denied her access to the structure to remove her personal items before the demolition, *Id.*;

6. Helen Stacey was afforded due process throughout the proceedings and availed herself of the legal avenues available to her, *Id.*, 789 A.2d at 776;

7. There was sufficient evidence that Helen Stacey had ample opportunity to make the necessary repairs but failed to do so, *Id.*; and,

8. The trial court did not err in determining that demolition of the Stacey structure was the appropriate remedy, *Id.*, 789 A.2d 777.

Helen Stacey requested that the Commonwealth Court reconsider its decision, and the Court denied that

request on January 28, 2002. Helen Stacey then filed a Petition for Allowance of Appeal before the Pennsylvania Supreme Court at Appellate Docket 129 WAL 2002, and her Petition was denied on July 10, 2002. *Stacey v. City of Hermitage*, 569 Pa. 727, 806 A.2d 865 (2002). Helen Stacey filed a Petition for Reconsideration, which was denied on September 24, 2002. Helen Stacey's petition for writ of certiorari was denied by this Court on April 21, 2003. The Staceys did not commence this federal court action until November 6, 2002, more than one month after Helen Stacey's Petition for Reconsideration was denied by the Pennsylvania Supreme Court in the state court action.

REASONS FOR DENYING THE PETITION

I. The Court of Appeals' Application of the *Rooker-Feldman* Doctrine to Helen Stacey's Claims Did Not Conflict with *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, ___U.S. ___, 125 S.Ct. 1517 (2005).

The *Rooker-Feldman* doctrine is derived from 28 U.S.C. §1257 and the understanding that "a United States District Court has no authority to review judgments of a state court in judicial proceedings. Review of such judgments may be had only in [the United States Supreme] Court." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 261 U.S. 114, 117, 43 S.Ct. 288, 67 L.Ed. 556 (1923). This doctrine precludes

lower federal courts from exercising jurisdiction over claims that were actually litigated in state court or are inextricably intertwined with a state court adjudication. *Parkview Associates Partnership v. City of Lebanon*, 225 F.3d 321, 325 (3d Cir. 2000); *FOCUS v. Allegheny County Court of Common Pleas*, 75 F.3d 834, 840 (3d Cir. 1996) (The *Rooker-Feldman* doctrine has been extended to encompass final decisions of lower state courts.)

In the recent case of *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, ____ U.S. ____, 125 S.Ct. 1517 (2005), this Court addressed the application of the *Rooker-Feldman* doctrine. Contrary to the Staceys' contentions, although the Court of Appeals did not consider *Exxon Mobil*, its decision that the *Rooker-Feldman* doctrine precluded some of Helen Stacey's claims did not conflict with *Exxon Mobil*. This case is different from the situation addressed in *Exxon Mobil* and is precisely the type of situation where the *Rooker-Feldman* doctrine should apply.

This Court observed that in both *Rooker* and *Feldman*, the plaintiffs had litigated and lost in state court and in their federal complaints were requesting that the federal district courts review and reverse unfavorable state court judgments. *Exxon Mobil*, 125 S.Ct. at 1521. In *Rooker* and *Feldman*, this Court held that such suits were properly dismissed for lack of subject matter jurisdiction since federal district courts lack the requisite appellate authority to review state court judgments. *Id.* at 1522.

In *Exxon Mobil*, two subsidiaries of Exxon Mobil formed joint ventures with Saudi Basic Industries Corp. (SABIC). *Id.* at1524-25. A dispute developed between the parties regarding royalties that SABIC was charging for sublicenses. *Id.* at 1525. SABIC sued the two subsidiaries in Delaware Superior Court in July 2000 seeking a declaratory judgment that the royalty charges were proper. *Id.* Two weeks later, Exxon Mobil and its two subsidiaries sued SABIC in federal court, alleging that SABIC overcharged the joint ventures for the sublicenses. *Id.* The state court action went to trial in March 2003 and the jury returned a verdict of over $400 million in favor of the subsidiaries. *Id.*

Before the state court trial, SABIC filed a motion to dismiss the federal court action on various grounds, but not including the *Rooker-Feldman* doctrine. *Id.* The federal district court denied the motion to dismiss and SABIC took an interlocutory appeal. *Id.* The Court of Appeals heard argument after the state court jury verdict and, *sua sponte*, raised the issue of whether the *Rooker-Feldman* doctrine deprived the federal district courts of subject matter jurisdiction because Exxon Mobil's claims had already been litigated in state court. *Id.* The Court of Appeals rejected Exxon Mobil's argument that *Rooker-Feldman* did not apply because the federal complaint had been filed before the state court judgment. *Id.* The Court of Appeals held that once Exxon Mobil's claims had been litigated to a judgment in state court, the federal court action was precluded by the *Rooker-Feldman* doctrine. *Id.* at 1526.

This Court reversed the judgment of the Court of Appeals and held that "[w]hen there is parallel state and federal litigation, *Rooker-Feldman* is not triggered simply by the entry of judgment in state court." *Id.* This Court also held that the *Rooker-Feldman* doctrine is confined to cases brought by state court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. *Id.* at 1521-1522. This Court also explained that the *Rooker-Feldman* doctrine does not apply where the federal plaintiff asserts "some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party." *Id.* at 1527, *citing GASH Assocs. v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993).

Unlike the situation in *Exxon Mobil*, this case presents the "paradigm situation in which *Rooker-Feldman* precludes a federal district court from proceeding." *E.B. v. Verniero*, 119 F.3d 1077, 1090-1091 (3d Cir. 1997). In this case, the federal court action was not commenced until well after the state court proceedings had ended.

More importantly, in the federal court action, certain claims asserted by Helen Stacey, including her claims against Sereday, sought to overturn or nullify the decision of the state court. These claims were based upon the allegation that her property was demolished without adequate notice or due process. However, before the Staceys filed the federal court action, the

Pennsylvania state courts had determined that Helen Stacey was provided with adequate notice and due process with respect to the demolition.

Therefore, since Helen Stacey's claims relating to the demolition were previously litigated in the Pennsylvania state courts, the Court of Appeals properly determined that the District Court did not have subject matter jurisdiction over these claims under the *Rooker-Feldman* doctrine.

In addition, it is clear that some of Helen Stacey's other claims in this case are so inextricably intertwined with claims that were previously litigated in the Pennsylvania state courts that if she succeeded in this case, the decisions of the Pennsylvania state courts would be effectively nullified. For purposes of the *Rooker-Feldman* doctrine, there are two circumstances where a federal claim and a state claim are inextricably intertwined: (1) when in to order grant the relief sought, the federal court must determine that the state court judgment was erroneously entered; and, (2) when the federal court must take action that would render the state court's judgment ineffectual. *Desi's Pizza v. Wilkes-Barre*, 321 F.3d 411, 420-421 (3d Cir. 2003).

In order for the District Court to find that the demolition violated due process, it would have to determine that the Pennsylvania state courts erred and render the judgment of the Pennsylvania state courts void. In other words, the only way that Helen Stacey could prevail on certain claims is for the District Court

to overrule the Pennsylvania Commonwealth Court by reinstating an appeal that the Commonwealth Court held was not actionable.

The gist of this lawsuit is that Helen Stacey was not afforded proper notice or an opportunity to present evidence in the Pennsylvania state court proceedings. The Commonwealth Court clearly held that it "...was evident that Stacey was afforded due process throughout the proceedings and availed herself of the legal avenues available to her." *Stacey*, 789 A.2d at 777. A decision in favor of Helen Stacey on certain claims could never be reconciled with the decision of the Commonwealth Court that the procedure utilized in the demolition of Helen Stacey's property was legal and followed due process.

Furthermore, as to Sereday and certain other Respondents, Helen Stacey has not raised any independent claims in this lawsuit. All of Helen Stacey's claims against Sereday and certain other Respondents are based upon the demolition which the Pennsylvania state courts have concluded was legal and in compliance with due process. In this lawsuit, Helen Stacey is attacking the judgment of the Pennsylvania state courts that the demolition was legal and complied with due process. Her claims against Sereday and certain other Respondents do not allege an injury that was not considered by the Pennsylvania state courts.

Therefore, because certain claims asserted by Helen Stacey in this lawsuit are inextricably intertwined

with her state court claims that were previously litigated, the Court of Appeals properly applied the *Rooker-Feldman* doctrine to these claims.

II. The Court of Appeals Properly Applied the *Rooker-Feldman* Doctrine to Raymond Stacey's Claims.

The *Rooker-Feldman* doctrine applies when the federal plaintiff was a party to or in privity with a party to the state court action whose outcome is being challenged. *Brown v. Damiani*, 154 F.Supp.2d 317, 325 (D. Conn. 2001).[1] The *Rooker-Feldman* doctrine binds not only the parties to the prior state court suit, but also their privities. *ITT Corp. v. Intelnet International Corp.*, 366 F.3d 205, 216, n. 19 (3d Cir. 2004). Parties in privity

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1 There are some courts that have applied the *Rooker-Feldman* doctrine against parties who did not participate in the state court action. *See Lemonds v. St. Louis County*, 222 F.3d 488 (8th Cir. 2000); *T.W. & M.W. v. Brophy*, 124 F.2d 893, 898 (7th Cir. 1997); *Republic of Paraguay v. Allen*, 949 F.Supp. 1269, 1273 (E.D. Va. 1996), *aff'd on other grounds*, 134 F.3d 922, 628 (4th Cir. 1997); *Williams v. Atkinson*, 792 F.Supp. 755, 761-63 (M.D. Ala. 1992), *aff'd*, 987 F.2d 774 (11th Cir. 1993). Indeed, the court in *Lemonds* noted that insisting that parties must be identical confuses the *Rooker-Feldman* doctrine with principles of *res judicata*. *Lemonds*, 222 F.3d at 495. While *res judicata* is concerned with the impropriety of allowing parties "two bites at the apple," the *Rooker-Feldman* doctrine is concerned with federalism and the proper delineation of the power of the lower federal courts. *Id.* However, the Third Circuit has held that *Rooker-Feldman* does not bar claims by parties who were not participants in the prior state court action. *FOCUS*, 75 F.3d at 840.

are those who have "mutual or successive relationships to the same legal right of property," or have "such an identification of interest of one person with another as to represent the same legal right." *Ammon v. McCloskey*, 655 A.2d 549, 554 (Pa.Super. 1995). "A nonparty is in privity with a party, when the party adequately represents the nonparty's legal interest in the first proceeding." *In re Estate of Royal*, 289 B.R. 913, 919 (N.D. Ill. 2003), *quoting In re Raleigh v. Haskell*, 1998 WL 809520, at *4 (Bankr. N.D. Ill.). "It is the identity of interests that controls in determining privity, not the nominal identity of the parties." *Id.*

In this case, Raymond Stacey is in privity with Helen Stacey as to claims arising out of the demolition of the Property. Raymond Stacey alleges that certain personal property belonging to him was destroyed in the demolition. Thus, Raymond Stacey's property interests which were allegedly affected by the demolition were the same as those of Helen Stacey in the state court action. With respect to the issues surrounding the demolition, the interests of Raymond Stacey and Helen Stacey were identical.

Moreover, as in the case of Helen Stacey's claims, Raymond Stacey's claims relating to the demolition were inextricably intertwined with Helen Stacey's state court claims. In order for Respondents to be found liable to Raymond Stacey for any alleged constitutional violations or damages arising out of the demolition, the District Court would have to nullify the state court decision that the demolition was legal and complied with due process.

Therefore, because Raymond Stacey was in privity with Helen Stacey and his claims relating to the demolition were inextricably intertwined with Helen Stacey's state court claims, the Court of Appeals did not err in applying the *Rooker-Feldman* doctrine to Raymond Stacey's claims relating to the demolition of Helen Stacey's property.

III. The Court of Appeals Properly Disposed of the Staceys' Claims.

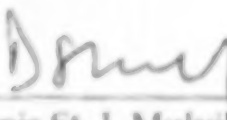
The Staceys claim that the Court of Appeals erred in affirming the District Court's decision to grant all the motions to dismiss "for all of the reasons stated therein." (Petition's App. 13) This contention is a mischaracterization of the Court of Appeals' decision. The Court of Appeals affirmed in part and vacated in part the order of the District Court. The Court of Appeals affirmed the District Court's decision to dismiss some of the Staceys' claims pursuant to the *Rooker-Feldman* doctrine. Of those claims that were not barred by *Rooker-Feldman*, the Court of Appeals held that certain claims were properly dismissed on other grounds and that claims of legal malpractice and claims relating to the lien filed by the City of Hermitage should not have been dismissed. The Court of Appeals' decision did not address the merits of those claims barred by the *Rooker-Feldman* doctrine.

Therefore, the Staceys' contention that the Court of Appeals' disposition of their claims was improper is without merit.

CONCLUSION

Petitioners fail to set forth adequate grounds for granting their Petition for Writ of Certiorari and, therefore, their Petition should be denied.

Respectfully submitted,



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(3)

Supreme Court, U.S.
FILED
SEP 23 2005
OFFICE OF THE CLERK

No. 05-199

IN THE

Supreme Court of the United States

RAYMOND STACEY, INDIVIDUALLY AND AS CO-EXECUTOR OF THE LAST WILL OF HELEN STACEY
Petitioners

v.

CITY OF HERMITAGE, ET AL.
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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September 23, 2005

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ARGUMENT

Respondents, the Seredays, in their Brief in Opposition are moving in the wrong direction when they attempt to resurrect a line of legal analysis rejected *in toto* by the unanimous U.S. Supreme Court in the recently decided ***Exxon Mobil***. The school of thought embraced by the defendants is now history. See *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. ----, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005) (herein "***Exxon Mobil***").

We appear to be looking here at a kind of variation on the theme of locking the barn door after the horse is gone; respondents are instead attempting to lock and bar the door to the courthouse after the litigants are inside.

It is necessary to begin our response by reiterating the basics: that the Third Circuit Court of Appeals wrongly decided the Staceys' appeal because it insisted on embracing the idea that the ***Rooker-Feldman*** doctrine could be expanded to incorporate preclusion law. The Third Circuit also erred when it adopted the idea that federal district courts under ***Rooker-Feldman*** lack jurisdiction over any claims identical to those on which state courts have rendered a final judgment. The Third Circuit in *Stacey*, in full reliance on ***Exxon I***, wrongly concluded that if "claims were actually litigated in state court, the District Court [has] no jurisdiction to entertain them. See id. at 106." *Stacey v. City of Hermitage* (unreported, see Petition at App. 7); *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 364 F.3d 102, 106 (3rd Cir.2004) (herein "***Exxon I***").

This line of analysis was soundly rejected by the U.S. Supreme Court when it overruled ***Exxon I***, and held that the jurisdictional ***Rooker-Feldman*** doctrine is not preclusion-based.

The U.S. Supreme Court has rejected absolutely the application of ***Rooker-Feldman*** to bar adjudication of claims in federal court simply because identical claims were brought in state court.

It is now a settled precedent of this Court that the ***Rooker-Feldman*** doctrine does not apply where the federal plaintiff asserts "some independent claim, ***albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party***." ***Exxon Mobil***, at 1527, quoting *GASH Associates v. Village of Rosemont, Ill.*, 995 F.2d 726, 728 (7th Cir. 1993). (Emphasis added).

"[N]either *Rooker* nor *Feldman* supports the notion that properly invoked concurrent jurisdiction vanishes if a state court reaches judgment ***on the same or related question*** while the case remains *sub judice* in a federal court." ***Ibid***. (Emphasis added).

"Disposition of the federal action, once the state-court adjudication is complete, would be governed by preclusion law", i.e., the Full Faith and Credit Act, 28 U.S.C. § 1738. It is now settled precedent that "federal jurisdiction over an action does not terminate automatically on the entry of judgment in the state court." ***Ibid***. "*Rooker* -*Feldman* is not triggered simply by the entry of judgment in state court. ***Id***., at 1526.

The Third Circuit grievously erred when it reasoned that the District Court lacked jurisdiction under the ***Rooker-Feldman*** doctrine over any claims identical to those in which the state court reached a final judgment in Helen Stacey's case, *Stacey v. City of Hermitage* (unpublished, see Petition at App. 7).

As Justice Ginsburg noted, "the Third Circuit misperceived the narrow ground occupied by *Rooker* -

Feldman, and consequently erred." ***Exxon Mobil***, at 1522. And the U.S. Supreme Court has made clear Section 1257 does ***not*** "stop a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court ***a matter previously litigated in state court***." ***Exxon Mobil***, at 1527 (emphasis added).

As Defendants have accurately stated, the Court of Appeals in ***Exxon I*** (364 F.3d 102 (3rd Cir.2004)), "held that once Exxon Mobil's claims had been litigated to a judgment in state court, the federal court action was precluded by the *Rooker-Feldman* doctrine. *Id.* at 1526." Brief in Opp., at 10.

Defendants also accurately report that "[t]his Court ***reversed*** the judgment of the Court of Appeals and held that '[w]hen there is parallel state and federal litigation, *Rooker-Feldman* is not triggered simply by the entry of judgment in state court.' " Brief in Opp., at 11.

However, respondents have lost all respect for accuracy and are dead wrong when they say that all of Helen Stacey's claims relating to the demolition were previously litigated in the Pennsylvania trial court and in the state's appellate courts.

Mrs. Stacey raised a claim ***in the state trial court*** that she was not provided with adequate notice and due process when she filed her petition for injunctive relief against the City of Hermitage and the City Board of Appeals.

However, when the state trial court entered the order dissolving the injunction sought by Helen Stacey, she was prohibited by a state clerk of court from filing an immediate appeal of the order. She was denied any opportunity for procuring meaningful review of that final order, and she was also prevented from obtaining a stay of the order. See ***pro se*** Complaint ¶¶ 18, 19, 33-35, 40, 41, in the Appendix hereto.

This deprivation of basic rights effected through denial by state actors of her right of access to the courts was never raised in the trial court, and never considered on review by the state appellate courts. It could not have been raised in the trial court because the acts complained of occurred after the trial court proceedings had ended. Since the wrongful conduct and acts were not issues of record in that court, they were claims never reviewed on the merits by the state appellate courts.

The federal District Court cannot and will not reinstate the injunction that was dissolved by the state trial court; neither can the District Court stay the demolition of the Stacey home, nor resurrect the edifice and the unique belongings that were destroyed.

To summarize, Mrs. Stacey's Estate ***is not*** seeking to overturn or void the dissolution of the injunction in the state trial court, but ***is seeking*** to vindicate rights which are federal in nature, and ***is seeking*** relief from injuries inflicted by the wrongful conduct of the Defendants as distinct from the kind of loss suffered in state court.

Rooker-Feldman applies ***only*** when the injuries of which the federal plaintiff complains were caused by the state-court judgment itself, rather than an independent, out-of-court or later injury that the state court did not consider.

The respondents, the Seredays, along with City personnel actually destroyed the Stacey home and uncondemned personal property without warrants immediately after the trial court's final order was entered on November 6, 2000. The state appellate court in its opinion misstated that date as November 7 because the facts of the actual demolition were not on record, and the Staceys were never given the opportunity to inquire or have a hearing into the matter.

(Helen) Stacey v. City of Hermitage, 789 A.2d 772, 774 (Pa.Commw.Ct. 2001).

Helen Stacey complained of injuries caused by Defendants' wrongful acts that are independent and distinct from injuries caused by dissolution of the injunction in the state trial court. See the ***pro se*** Complaint ¶¶ 15, 20-21, 37-38, 42-43, 52-54, 56 in the Appendix (R.App. 1-16)

The gist of this case is found in the Petitioners' ***pro se*** Complaint, which the Third Circuit failed to consider fully and construe liberally as true under *Estelle v. Gamble*, 429 U.S. 97 (1976). Some of Staceys' ***pro se*** allegations against the Seredays and the City of Hermitage are as follows:

> 56. In doing the acts and things complained of...the defendants were conspirators engaged in a scheme and conspiracy designed, intended to, and which in fact did, deny and deprive plaintiffs of rights guaranteed under the Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution....
>
> 15. Defendants Richard Sereday and Roseann Sereday, doing business as Sereday Excavating, ran a heavy equipment demolition operation out of their home in Masury, Ohio. Defendant City of Hermitage awarded them the contract to demolish plaintiffs['] family home, and as such the Seredays had a duty not to injure plaintiffs or deprive them of their civil rights at the time of the occurrences alleged herein.
>
> 20. Helen Stacey was the owner of a large brick building, (the family home), located at 1560 East State Street, Hermitage, Pennsylvania, where she had lived with her family for over 50 years, accumulating a great deal of personal property there, including private papers, tax returns, receipts and family photos.

21. Helen's son Raymond had lived in the family home much of his life and also accumulated personal property there, including private papers, receipts, collectibles and original art work.

37. On November 6, 2000, the City seized the property with force by entering the family home without plaintiffs' consent, using heavy equipment to demolish the structure and removing material from the premises.

38. While plaintiff's [Helen Stacey's] case was still pending in the state court system, the City in demolishing the family home destroyed the structure and its contents as evidence so it would not be available for further proceedings, such destruction being in violation of the Pennsylvania Crimes Code [18 Pa.C.S. §] 4910.

42. The City seized the property with force by entering the family home and demolishing the structure and all its contents without first obtaining a warrant. Among the items destroyed were private papers, tax returns, books, original artwork, collectibles and family photos.

43. The City's demolition of the real and personal property denied plaintiffs the value of the property and deprived them of their civil rights.

52. By demolishing plaintiffs home without adequate prior notice and by failing to provide plaintiffs with an opportunity for a meaningful hearing to dispute the alleged grounds for the emergency demolition, the defendants, acting under color of state law, have deprived plaintiffs of their property without due process of law in violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution and 42 [U.S.C.] § 1983.

53. By entering with force and searching plaintiffs home without warrants and without consent, defendants, acting under color of state law, have violated plaintiffs right to be free from unreasonable searches under the Fourth Amendment to the United States Constitution and 42 [U.S.C.] § 1983.

54. By entering with force and searching plaintiffs home without warrants and without consent, and forcibly seizing plaintiffs home without adequate due process of law, defendants acting under color of state law, have violated plaintiffs right to privacy under the Fourth, Fifth and Ninth Amendments to the United States Constitution and 42 [U.S.C.] § 1983.

It is clear that Helen Stacey complained of wrongful seizures of property without warrants by the Seredays and the City, and their participation in the destruction of her legal claim, i.e., the res of the injunction (the home) and injunctive relief itself, before appellate review could be had, in violation of the First, Fourth and Fourteenth Amendments to the U.S. Constitution.

These are certainly ***independent claims*** as so defined by the U.S. Supreme Court in ***Exxon Mobil***.

———— ♦ ————

In Part II of their brief, Defendants do not and cannot debate the fact that Plaintiff Raymond Stacey was ***not a party*** to the state court action by his mother Helen Stacey. However, it is disingenuous in the extreme (and cheeky) for them to advocate that the U.S. Supreme Court when reversing the Third Circuit in ***Exxon I*** makes it possible for the ***Rooker-Feldman*** doctrine to apply to a party in privity with a party to the state court action.

For this startling proposition, Defendants rely on *ITT Corp. v. Intelnet international Corp.*, 366 F.3d 205, 216, n. 19 (3d Cir. 2004).

No such statement as to any form of privity triggering a ***Rooker-Feldman*** bar to federal jurisdiction can be found anywhere in the text of ***Exxon Mobil***.

In *ITT Corp*, the Third Circuit again "misperceived" the scope of ***Rooker-Feldman*** as it did in ***Exxon I***. It held that federal jurisdiction was barred if the claim was actually litigated in state court. The court in *ITT* stated with enthusiasm that '[t]he "actually litigated" test is a recent development unique to our Court.' *ITT*, at 210. It was indeed a test unique to the Third Circuit, and a test that brought it into conflict with other Circuit Courts of Appeals.

This so-called "test" has been discarded (perhaps brutally); it is not now and never was an element of the proper standard of review. *ITT* directly relied on the line of reasoning employed in ***Exxon I***:

> The opinion of our Court in *Exxon Corp. v. Saudi Basic Industries Corp.*, 364 F.3d 102 (3d Cir.2004) [***Exxon I***], ***borrowing from preclusion concepts***, concluded that "[c]laims and issues decided against an entity bind also its parties in privity" for *Rooker-Feldman* purposes. (Emphasis added).

ITT, at 216 n. 19. *ITT*, as a consequence of this reliance on a rejected line of authority, is now bad law.

Justice Ginsburg [illegible]t that the ***Rooker-Feldman*** doctrine ***is distinct*** from t[illegible]ffirmative defense of prelusion. Preclusion in federal litigation following a judgment in state